

1 DISTRICT COURT OF THE STATE OF NEW YORK

2 COUNTY OF SUFFOLK PART D-35

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, :CASE NO.

5 Petitioner, :2011SU007884

6 - against - :

7 THOMAS MOROUGHAN, :

8 Defendant. :

9 -----X

June 6, 2011  
Central Islip, New York

11 BEFORE:

13 HON. GAETAN LOZITO  
14 District Court Judge

15 APPEARANCES:

16 THOMAS SPOTA, ESQ.  
17 District Attorney - Suffolk County  
For the People of the State of New York  
18 BY: RAPHAEL PEARL, ESQ.  
19 Assistant District Attorney

20 THE LAW OFFICE OF WILLIAM PETRILLO  
21 11 Clinton Avenue  
Rockville Centre, New York 11570  
22 BY: WILLIAM PETRILLO, ESQ.  
23 Attorney for the Defendant

24  
25 Susan T. Connors, RPR  
Senior Court Reporter

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1 THE CLERK: 42, Thomas Moroughan.

2 THE COURT: Second call.

3 Mr. Petrillo and Mr. Pearl are in  
4 the hallway.

5 Second call.

6 (WHEREUPON, A RECESS WAS TAKEN)

7 THE CLERK: This is 42,  
8 Thomas Moroughan.

9 MR. PEARL: May we approach?

10 THE COURT: Yes.

11 (WHEREUPON, A DISCUSSION WAS HELD  
12 OUTSIDE THE PRESENCE OF THE JURY BETWEEN  
13 THE ASSISTANT DISTRICT ATTORNEY,  
14 MR. PEARL, DEFENSE COUNSEL, MR. PETRILLO,  
15 AND THE HON. GAETAN LOZITO)

16 THE COURT: Sir, would you step up,  
17 please.

18 (WHEREUPON, THE DEFENDANT,  
19 THOMAS MOROUGHAN, IS PRESENT IN THE  
20 COURTROOM)

21 THE COURT: People.

22 MR. PEARL: Thank you, Your Honor.

23 Your Honor, at this time under  
24 Docket 2011SU007884 The People have an  
25 application to dismiss the charges against

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1 Mr. Moroughan in the interest of justice  
2 pursuant to -- excuse me, Your Honor  
3 170.30 F.

4 Judge, just for the record, a  
5 review of the evidence discloses a  
6 significant deficiency in the proof which  
7 would impact our ability to prove beyond a  
8 reasonable doubt the elements of the  
9 charges currently pending against the  
10 defendant -- I'm sorry, I'm just out of  
11 breath -- those being Reckless  
12 Endangerment as a Class A Misdemeanor and  
13 Assault in the Second Degree as a Class D  
14 Felony.

15 There is conflicting evidence  
16 surrounding the facts and circumstances  
17 which led to the discharge of a firearm by  
18 off duty Police Officer Anthony DiLeonardo  
19 from Nassau County, as well as the actions  
20 of both parties thereafter.

21 There is evidence to support the  
22 fact that defendant cabdriver escalated  
23 the confrontation by pursuing the vehicle  
24 operated by the off duty police officers,  
25 stopping to initiate an angry verbal

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1 exchange and subsequently exiting his  
2 vehicle to confront the officers on the  
3 street.

4 There is also evidence to support  
5 the fact that the defendant withdrew from  
6 the confrontation by retreating to his  
7 vehicle and attempted to drive away from  
8 the location. In his haste to withdraw,  
9 he was moving his vehicle forward at the  
10 time the shots were fired.

11 There is also evidence that the  
12 officers involved had been consuming  
13 alcoholic beverages prior to the shooting.  
14 And that Officer DiLeonardo refused to  
15 provide a sample of his blood and urine to  
16 hospital personnel who were treating his  
17 injuries following the incident.

18 While there is evidence to prove  
19 the officer consumed alcohol prior to  
20 discharging the firearm, there is  
21 conflicting evidence to prove he was  
22 legally intoxicated, so it negatively  
23 impacts upon the officer's credibility  
24 upon whose testimony the charges are  
25 based. That undermines The People's

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1 ability to obtain a conviction beyond a  
2 reasonable doubt.

3 Further, the scientific evidence,  
4 specifically, trajectory and  
5 reconstruction analysis, which has been  
6 turned over to Mr. Petrillo today,  
7 provides some support for the position of  
8 both The People and the defendant, but it  
9 is not in and of itself dispositive of the  
10 ultimate issues.

11 The defendant suffered from two  
12 non-life threatening gunshot wounds and a  
13 broken nose as a result of the conflict  
14 with Officer DiLeonardo. The officer  
15 suffered minor injury, the most serious  
16 being a cut to his finger, which he caused  
17 by breaking the driver's side window of  
18 the cab with the butt of his gun in order  
19 to arrest the defendant. That action also  
20 caused the defendant's broken nose.

21 In addition, the defense has  
22 represented that the defendant does not  
23 wish to testify before a grand jury or to  
24 participate in any criminal proceeding  
25 regarding the events of that night.

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1           We have attempted to speak with the  
2           defendant's girlfriend who was -- who was  
3           a passenger in the cab at the time of the  
4           shooting, but she has declined to speak  
5           with us.

6           Our investigative findings have  
7           been made available to the Nassau County  
8           Police Department and their Internal  
9           Affairs Bureau.

10          Therefore, following the  
11          acknowledgment of counsel and his joining  
12          in the application, The People would be  
13          moving to dismiss the charges against the  
14          defendant pursuant to 130.70.

15          MR. PETRILLO: F.

16          For Mr. Moroughan,  
17          William Petrillo, 111 Clinton Avenue,  
18          Rockville Center.

19          Good morning, Your Honor.

20          THE COURT: Good morning.

21          MR. PETRILLO: Your Honor, I would  
22          first like to thank the Suffolk County  
23          District Attorney's Office for their  
24          investigation into this case. And, quite  
25          frankly, for correcting the injustice that

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1 took place to Mr. Moroughan back on  
2 February 27th when he was, quite frankly,  
3 arrested without any basis to do so. So  
4 we thank them for their expeditious  
5 investigation and for correcting this  
6 injustice.

7 Umm, we do agree, Judge, that the  
8 case should be dismissed pursuant to  
9 170.50 Subdivision F, which calls for a  
10 legal impediment.

11 It is our position in this case,  
12 Judge, that as The People stated, there is  
13 insufficient evidence to prove the case  
14 beyond a reasonable doubt. The legal  
15 impediment here is that Mr. Moroughan is  
16 actually innocent in this case.

17 It has been our position from day  
18 one that on the day in question  
19 Mr. Moroughan did not commit any crime.  
20 There was never a basis to have arrested  
21 him in the first place. And he is  
22 completely innocent.

23 We do not agree with all of the  
24 findings of fact as stated or as  
25 interpreted by The People.

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1 I will acknowledge on the record,  
2 Judge, that we do agree that at the time  
3 the shots were fired Mr. Moroughan was  
4 moving forward in his -- in his taxicab.  
5 He was not moving at anybody, he was not  
6 intending to hit anybody, he was not  
7 acting reckless, and he was not acting  
8 with criminal negligence, he was simply  
9 moving forward, endangering no one. And,  
10 quite frankly, fleeing for his life in an  
11 effort to get out of there.

12 I believe it's undisputed in this  
13 case, Judge, that at the time the two  
14 shots were fired at Mr. Moroughan the off  
15 duty officers had not even identified  
16 themselves yet at that point.

17 The People in their findings of  
18 fact talk about an alleged verbal  
19 confrontation and Mr. Moroughan allegedly  
20 escalating a confrontation. We do  
21 disagree with those findings of fact,  
22 Judge, as they do ignore the series of  
23 traffic incidents that took place prior to  
24 that with the off duty officer. The one  
25 who The People say there is conflicting



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1 evidence of intoxication. The one who  
2 The People say refused to provide blood  
3 and urine. He was driving -- a  
4 conflicting series of traffic incidents,  
5 it's our position caused by and escalated  
6 by the off duty police officer.

7 Mr. Moroughan, in our position, did  
8 not escalate anything, and was reacting to  
9 what was happening to him.

10 The People did speak about an  
11 alleged butt of the gun. And it's true,  
12 Mr. Moroughan suffered some injuries as a  
13 result of being pistol whipped and hit  
14 with the butt of a gun, but it was not in  
15 an effort to perform any sort of lawful  
16 arrest.

17 I also will acknowledge for the  
18 record that I have advised Mr. Moroughan  
19 that this case is being dismissed. That  
20 he -- that there is no need to be  
21 testifying before a grand jury or  
22 participating in any criminal proceedings.

23 And I have let the Suffolk County  
24 District Attorney's Office know that as  
25 well.

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1           So in the end, Judge, we agree that  
2           the case should be dismissed pursuant to  
3           170.30 F. That the legal impediment is  
4           his actual innocence. That there was  
5           never a basis or probable cause for the  
6           arrest in the first place.

7           And we join in the application to  
8           dismiss the case for those reasons.

9           THE COURT: For the reasons --

10          MR. PEARL: Judge, just so the  
11          record is clear, while there might be a  
12          legal impediment, The People are not  
13          joining in that application of actual  
14          innocence.

15          People are relying on our statement  
16          on the record.

17          THE COURT: The People's  
18          application to dismiss pursuant to Section  
19          170.30 Subdivision F for the reasons  
20          stated in the record by The People is  
21          granted.

22          MR. PEARL: Thank you, Your Honor.

23          MR. PETRILLO: Thank you,  
24          Your Honor.

25          Have a nice day.

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\* \* \*

I, Susan T. Connors, Senior Court Reporter,  
hereby certify that the foregoing is a true and  
correct transcript of the County Court proceedings  
regarding The People of the State of New York -v-  
Thomas Moroughan, held on June 6, 2011, at Central  
Islip, New York.

Dated: 10/4/11

Susan T. Connors  
Susan T. Connors, RPR  
Senior Court Reporter